IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO.4917 OF 2001

1. A.K. Biswas
2. Asutosh Kanugo
3. Arthur Swamy
4. Alok Basu
5. N.K. Sanyal
6. Sanjiv Mitra
7. A.K. Gupte
8. Bipul Chaudhary
9. M.N. Aswale
10. D.E. Parker
11. V.K. Roy
12. Rahin Sarkar
13. P.K. Biswas
14. Abir Sen
15. R.S. Pawar
16. A.D. Khan
17. Aparesh Das
18. Dipankar Biswas
19. H.S. Robinson
20. J.K. Chaudhary
21. D. Natarajan

All of whom are working as
Suprvisors in India Security
Press and CNP Nasik Road, Nasik ... Petitioners

V/s.

1. Union of India
through the Secretary, Ministry
of Finance, New Delhi

2. The Joint Secretary (Currency
Coinage & Administration)
Department of Economic Affairs
Ministry of Finance, New Delhi

3. General Manager
Currency Note Press
Jail Road, Nasik

4. The General Manager
India Security Press
Jail Road, Nasik Road ... Respondents

Mr.M.S. Karnik for Petitioner

Mr.Rajiv Chavan with Shri D.A. Dave for Respondent No.1

CORAM: **V.G. PALSHIKAR & SMT.NISHITA MHATRE, JJ.**

DATED: **JANUARY 27, 2005**

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. By this Petition, the Petitioners impugn the decision of the Central Administrative Tribunal in dismissing the Original Application filed by them in view of the judgment of the Supreme Court in the case of *Krishan Prasad Gupta v/s. Controller, Printing & Stationery,* **(1996) 1 SCC 69**. The Original Application has been dismissed because the Tribunal was of the opinion that the claim made by the Petitioners for payment of overtime wages in accordance with section 59 of the Factories Act, 1948 was not maintainable before the Tribunal as it lacked jurisdiction to decide the issue.

2. The undisputed facts in the present case are as follows:

The Petitioners are working as supervisors with the India Security Press. Prior to their promotions as supervisors they were being paid overtime allowance under section 59 of the Factories Act. After their promotion as supervisors, the India Security Press stopped paying them overtime at the rate payable under

the Factories Act. About 44 supervisors had approached the Central Administrative Tribunal by preferring Original Application No.761 of 1988 claiming overtime allowance in accordance with section 59(1) of the Factories Act. Several such Original Applications were filed by various other supervisors. All these Original Applications were allowed, on 28.7.1997. Another batch of supervisors preferred Original Application No.962 of 1996 for claiming the same allowance. However, the Tribunal relying on the judgment of the *Krishan Prasad Gupta (supra)* held that the claim under the Factories Act, which was a corresponding law, could not be made under section 28 of the Administrative Tribunals Act. The Petitioners filed Original Application No.26 of 2000 claiming overtime allowance under the Factories Act since others in the same cadre had been granted this allowance in the earlier Original Applications filed before the Central Administrative Tribunal. The Petitioners based their demand on the principle of equal pay for equal work. This Original Application was dismissed on 19.1.2001 in view of the decision of the Tribunal in Original Application No.962 of 1996 dated 25.7.1997. The Tribunal has concluded that although the Original Applications filed in the year 1996-97 by similarly situated supervisors had been allowed by the Tribunal, after the decision in the case of Krishan Prasad Gupta (supra), it could not take the same view as

the Tribunal had taken in those Original Applications. The Tribunal instead followed the decision taken by it in several Original Applications on 28.7.1997 and rejected the instant Original Application.

3. The question which is required to be determined by us is whether a claim made under the Factories Act could be denied by the Administrative Tribunal because section 28 of the Administrative Tribunals Act ousts the jurisdiction of the Central Administrative Tribunal. Section 28 of the Act reads as under:

> 28. Exclusion of jurisdiction of courts except the Supreme Court. - On and from the date from which the any jurisdiction, powers and authority becomes excercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or service matters concerning members of any Service or persons appointed to any Service or post, no court except -
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> (a) the Supreme Court; or
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> (b) any Industrial Tribunal, Labour court or other authority constituted under the Industrial Disputes Act, 1947 (14 of 1947) or any other corresponding law for the time being in force,
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> shall have, or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters.

4. Thus, the Tribunal constituted under the Administrative Tribunals Act can exercise the jurisdiction in service matters except when these

matters fall within the jurisdiction of the Industrial Tribunal, Labour Court or an authority constituted under the Industrial Disputes Act or an authority constituted under any other corresponding law. Undisputedly, there is no authority under the Factories Act for preferring a claim for overtime wages. Such a claim can be filed before the Labour Court constituted under the Industrial Disputes Act by a workman as defined under section 2(s) of the Industrial Disputes Act. Therefore, although the Factories Act may be a corresponding law, there is no authority under that Act set up for claiming overtime wages. A person who is not a workman under the Industrial Disputes Act would, therefore, have no recourse to the Labour Court constituted under the Industrial Disputes Act for claiming overtime wages payable under the Factories Act. Obviously, therefore, the jurisdiction of the Administrative Tribunal is not excluded as there is no authority under the corresponding law that is the Factories Act.

5. The judgment in the case of *Krishan Prasad Gupta*'s case (supra) is in respect of claims made under the Payment of Wages Act. The Supreme Court held that the Payment of Wages Act was a corresponding law within the meaning of section 28 of the Administrative Tribunals Act. The jurisdiction of the authority under section 15 of the Payment of Wages Act remained

unaffected. All claims made to the authority constituted under the Payment of Wages Act were saved. The Payment of Wages Act is a self contained code under which the authority i.e., the Labour Court appointed can decide the claims of employees. No such authority has been named under the Factories Act before which employees may claim overtime allowance. Therefore, the jurisdiction of the Central Administrative Tribunal is not excluded.

6. There can be no dispute that supervisors are entitled to overtime in accordance with section 59 of the Factories Act. In the case of *Union of India & Anr. v/s. G.K. Kokil & Ors.*, **AIR 1984 SC 1022**, the Apex Court considered where the claims filed under section 33-C(2) of the Industrial Disputes Act by persons who were workmen within the meaning of Industrial Disputes Act were entitled to wages under section 59 of the Factories Act. Thereafter, several Original Applications filed before the Administrative Tribunal were also decided in favour of the supervisors who are doing the same kind of work as the present Petitioners.

7. The Tribunal was, therefore, in error in concluding that it had no jurisdiction to decide the issue in the Original Application filed by the Petitioner as to whether they were entitled to overtime

wages under the Factories Act. We, therefore, set aside the impugned order and remand the matter to the Tribunal.

8. Rule made absolute accordingly. No order as to costs.